



PECFA POST



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SUMMARY OF OCTOBER 1, 2007, CHANGES TO COMM 5

Chapter Comm 5 of the *Wisconsin Administrative Code* contains Wisconsin Department of Commerce (Commerce) rules for numerous credentials that businesses and individuals are either mandated or permitted to obtain. These credentials include certifications and registrations that relate to safe storage of flammable, combustible, and hazardous liquids – and to the Petroleum Environmental Cleanup Fund Award (PECFA) program's cleanup of properties contaminated by these liquids.

On October 1, 2007 changes to these credential rules became effective, significantly enhancing Commerce's ability to promote safety and these cleanups.

Two sets of rule changes relate to the PECFA program. The first set consists of expanding the reasons for denial, suspension or revocation of a credential to include: (1) submittal of false or routinely inadequate reports to Commerce; (2) performance of activities that result in both exceeding a cost cap established by Commerce and submittal of a claim to Commerce for the cost in excess of that cost cap; and (3) failure to pay a financial penalty assessed by Commerce for requesting reimbursement of a grossly ineligible cost. The second set of changes expands a current requirement for consultants and consulting firms to have liability coverage, by requiring them to submit proof of that coverage when applying for or renewing a credential.

The changes for the credential rules that relate to safe storage include: (1) creating certifications for individuals who design or test corrosion-protection systems for underground piping and tanks that hold these liquids; (2) updating several specialty credential categories by deleting outdated activities and adding activities that have proven to better reflect the nature of the work; (3) eliminating continuing-education requirements where the corresponding technical aspects change only gradually and continuing-education opportunities within the industry are limited; (4) shortening the approval duration for continuing-education courses from five years to three; (5) requiring Commerce notification where an approved continuing education course is discontinued or modified; (6) no longer allowing renewal of credentials after they expire, except through compliance with all of the requirements for new applicants; (7) expanding the reasons for denial, suspension or revocation of a credential to include failure to maintain required records, denial of access to requested records, failure to submit a required notice or report to Commerce within a required time period and submittal of false or routinely inadequate reports; (8) directly linking all credentials for storage of these liquids to corresponding construction and operation requirements in chapter Comm 10; and (9) requiring liability insurance coverage for individuals and firms which install, test, line, clean or remove tank and piping systems, or who perform site assessments for these systems.

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TOXICITY CHARACTERISTIC LEACHING PROCEDURE (TCLP) LANDFILL REQUIREMENTS

Commerce has observed an increase in cost exceedance requests for TCLP collection and analysis. The most common requests are from consultants indicating that landfills are asking for TCLP lead analysis. Generally, total lead analysis can be submitted in lieu of TCLP lead if the total lead is less than 100 parts per million (ppm). If total lead has been measured at a concentration greater than 100 ppm and disposal of excavated soil or investigation waste is to take place at a landfill, TCLP analysis will likely be required by the landfill. It may be good practice to collect an extra soil sample during an investigation if lead exceeds 100 ppm.

TCLP analysis may be required for other contaminants (benzene, 1,2 DCA, etc...) if the source of contamination was an above ground petroleum tank. The TCLP analysis is not required if total analysis for parameters are less than 20 times the acceptance limits. Commerce urges communication with the landfills to be sure that waste profiling requirements are met.

DECEMBER ONLINE REPORTING REMINDER

Commerce would like to remind all consultants to complete annual online reports for all occurrences for which the previous online report was completed in December 2006. Reports must contain all analytical results collected since the previous report was submitted. If the data is not submitted, Commerce will consider the report incomplete and the costs may not be reimbursed. In addition, Commerce may consider the report to represent a "lack of progress" at the site.

Tip: In addition to the above, all (both bid and non-bid) sites in progress prior to May 1, 2006 should be entering an annual reporting phase. In an effort to make reporting dates less confusing, Commerce suggests completing an online report for all sites (bid and non-bid) in December. This fulfills the annual reporting requirement and, therefore, future annual reports can be completed for all sites in December 2007.

CONSULTANT REQUIREMENTS FOR CONTRACTS

Commerce would like to remind all PECFA consultants to terminate contracts on the PECFA Contract Notification and Site Reporting Website. Contracts are to be terminated on the website within the 14-day window specified in Comm 47. The contract termination notification assists Commerce in maintaining movement to the first point of closure and assures that the responsible party (RP) maintains eligibility and keeps the interest incurred on the PECFA loans eligible.

The website is designed so the current contracted consultant is the only user with access to the specific occurrence information. Commerce is notified if another firm has attempted to access the data. The contract termination function resets the database and allows the next consultant to complete the required reporting.

PECFA POST SUBSCRIPTION AND REQUEST FOR TOPICS

To subscribe to the PECFA Post go to <http://commerce.wi.gov/ER/ER-PECFA-News.html>, enter your email address and name and click the subscribe box. You will receive an email to confirm your email address. Upon confirmation, you will have been added to the electronic distribution list.

Commerce appreciates suggestions for future Post topics or comments on current articles. Please contact Beth Erdman at beth.erdman@wisconsin.gov to provide suggestions or topics.

CONDITIONAL CLOSURES

Commerce is contacting RPs for sites conditionally closed prior to January 2007 to remind them of their responsibility to complete conditions of closure. Here are the links to the list of 126 sites: <http://commerce.wi.gov/ERpdf/pecfa/ER-PECFA-ConditionalClosureList112607.pdf> and <http://commerce.wi.gov/ERexcel/ER-PECFA-ConditionalClosureList112607.xls>.

The majority of these sites (greater than 84%) received conditional closure prior to the implementation of the Wisconsin Department of Natural Resources (DNR's) groundwater and/or soil GIS registry. Many have groundwater use restrictions, soil deed notices or both as outstanding conditions for closure. These may have been recorded along with completion of other conditions, but not submitted to Commerce. If this is the case, please submit the required documentation to Commerce and a final closure letter will be issued.

If this is not the case, the introduction of groundwater and soil GIS registries on November 1, 2001 and August 1, 2002, respectively, and the Land Use Control (LUC) letters in 2006, have created new options to satisfy closure conditions that include:

- Lost monitoring wells: Submit a description of efforts made to locate the missing wells, as well as the construction reports and surveyed locations for those wells. In addition, you must submit a GIS packet to Commerce and a groundwater GIS fee to DNR (if not previously submitted). Commerce's final closure letter will include a LUC stipulation requiring abandonment of lost wells if/when they are encountered.
- Monitoring wells not abandoned because they are being used for continued monitoring: Submit the latest monitoring data to Commerce. Commerce may be able to respond with a final closure letter specifying the LUC to abandon the wells in the future.
- Soil GIS: Instead of recording soil deed notice(s), RPs can pay the soil GIS fee to the DNR (\$200) and submit a soil GIS package to Commerce. This route may be particularly useful in cases where owners of off-site contaminated properties have rejected requests to record deed notices.
- Signage: With Commerce approval, the RP may opt to post permanent signs warning the public of the residual soil contamination hazard in order to satisfy the public notification requirements in the conditional closure letter and NR 714.
- Groundwater GIS: The RP can submit a groundwater GIS package to Commerce and submit the \$250 fee to the DNR instead of filing the groundwater use restriction on the deed.
- Groundwater Use Restriction (GWUR): The RP can record the GWUR on the deed per conditional closure letter and send a copy to Commerce (Commerce can assemble a GIS package from file materials and submit it to the DNR without a fee for inclusion on the GIS registry at DNR discretion).
- Maintaining a Cap, Land Use, Future Investigation Beneath an Impediment, etc.: In lieu of recording these on the deed, requirements can be satisfied with a LUC letter from Commerce. RPs may need to submit associated maintenance plans, GIS fees and packages (if not previously submitted) or other documentation to satisfy this closure condition.
- Waste Disposal Documentation, Off-Site Issues, ROW Notifications, etc.: If documentation has been lost or the RP is having difficulty satisfying these conditions, there may be other approaches that can be followed. Contact PECFA site review staff to discuss options to move the site to final closure.

- Missing RP: If the RP is missing (deceased, left state, unknown location, sold property, etc.) the current property owner is allowed to complete the required closure activities, utilizing PECFA.

Depending on the condition, there may be other options for final closure not identified above. If you have questions about a specific site and a route to final closure, please contact the site reviewer who signed the conditional closure letter, the site reviewer in charge of the area where the site is located, or David Blair at (608) 261-2515.

For sites with remaining PECFA eligibility, Commerce will reimburse costs at the current Usual and Customary Cost Schedule (UCCS) rates. Commerce may approve the costs to complete the tasks for these sites, even though costs exceed established caps and/or final claims have previously been submitted. Commerce will also consider assigning agent status to consultants contracting to complete the scopes of work, if it expedites final closure.

For sites where closure responsibilities are not completed, particularly those where RPs fail to respond to multiple letters requesting compliance, contact from Commerce attorneys or the Department of Justice should be expected.

REMINDER WITH REGARD TO COMMERCE ZIP CODE REASSIGNMENTS

Consultants are reminded the areas with Commerce numbers beginning with the following three zip code digits may have new site review managers, in different offices, per the August 2007 zip code reassignment: 530, 531, 532, 534, 538, 540 and 547. The names of the site review managers assigned to these areas are listed in the PECFA Site Review Contact Information Table on page 8 of this publication. Unless specifically directed to do otherwise, consultants are to direct all correspondence to the appropriate site review manager. Failure to do this has increased review and response times, particularly with regard to correspondence sent to the wrong site review section office.

OPEN RECORDS REQUESTS

The Commerce Bureau of Petroleum Products and Tanks has been receiving a large number of open records requests. Many of these requests have been very broad or unclear, which has resulted in a need to contact the person submitting the request for clarification.

To alleviate the need to contact the request submitter, Commerce has created a web page that provides open records request information and a submittal form. Following is a link to this web page: <http://apps.commerce.wi.gov/OpenRecords/>.

WHAT CONSTITUTES AN EMERGENCY ACTION

Comm 47.03 states that Commerce's finding of an emergency will be based upon an immediate need to protect public health or safety. It is Commerce's view that an emergency is one that must be responded to within the first 72 hours of the identification of an emergency situation. Situations requiring immediate response are likely to involve impacted potable water supplies or indoor air quality that could result in health issues or a potential explosion. Emergency action for impacted potable water supplies could be providing bottled water; whereas, air quality could be remedied by ventilation. Ideally, emergency action funding will only be provided for a period of not more than six months, to allow time for a permanent remedial solution to be identified and funded through the normal PECFA process.

QA/QC

Are all your T's crossed and I's dotted when completing your reports?

Site Investigation Reports are to follow NR 716.15, which includes the correct site name, Commerce and DNR BRRTS numbers, maps to scale, surrounding properties identified, all utilities outlined, old and current tank system locations, etc. Check your tables to make sure that all the data has been transposed from the laboratory sheets in the correct units – parts per billion or parts per million. Are the tables legible? If there are years of data, change the table to landscape.

With regard to GIS packets, the fee check must be submitted to the DNR program manager for the appropriate region and the GIS packet is to be submitted to the agency project managing the case. Commerce is still receiving fee checks. In addition to the above, GIS submittals must be in the correct format as stated in the DNR Checklist of Documents for GIS Registry Packet – PUB-RR 688. Deeds, tables, and maps may not be larger than 8.5 by 14 inches. GIS packets that need to be down sized, images made clearer or with other missing information will be returned.

Also, a reminder to check the math in the UCCS tables submitted with change orders, bid waivers and deferrals.

PECFA TRIVIA QUESTIONS**Question #1:**

Groundwater contamination deed restrictions have not been required since: A) November 2001 B) August 2002 C) June 2006 D) Still required

Answer: A) On November 1, 2001 the implementation of the groundwater GIS registry coupled with detailed closure letters replaced the use of groundwater use restrictions.

Question #2:

How much is the maximum allowable cost for a site investigation and development of a remedial action plan without prior approval:

Answer: \$20,000 per site, not occurrence. If two or more releases have occurred, the site investigation cap is \$20,000 for the site, not for each release.

Question #3:

When using temporary wells to “characterize” groundwater at a site, does the consultant need prior approval from DNR:

Answer: Yes. May 7, 2001 the DNR RR-647 Temporary Monitoring Well Fact Sheet and Guidance requires approval of construction prior to installation.

Question #4:

When having trouble with web reporting you should: A) give up and try again next time B) ignore the deadline, it is only interest and future costs C) call your legislator D) contact Beth Erdman, Department of Commerce

Answer: D) contact Beth Erdman, Department of Commerce

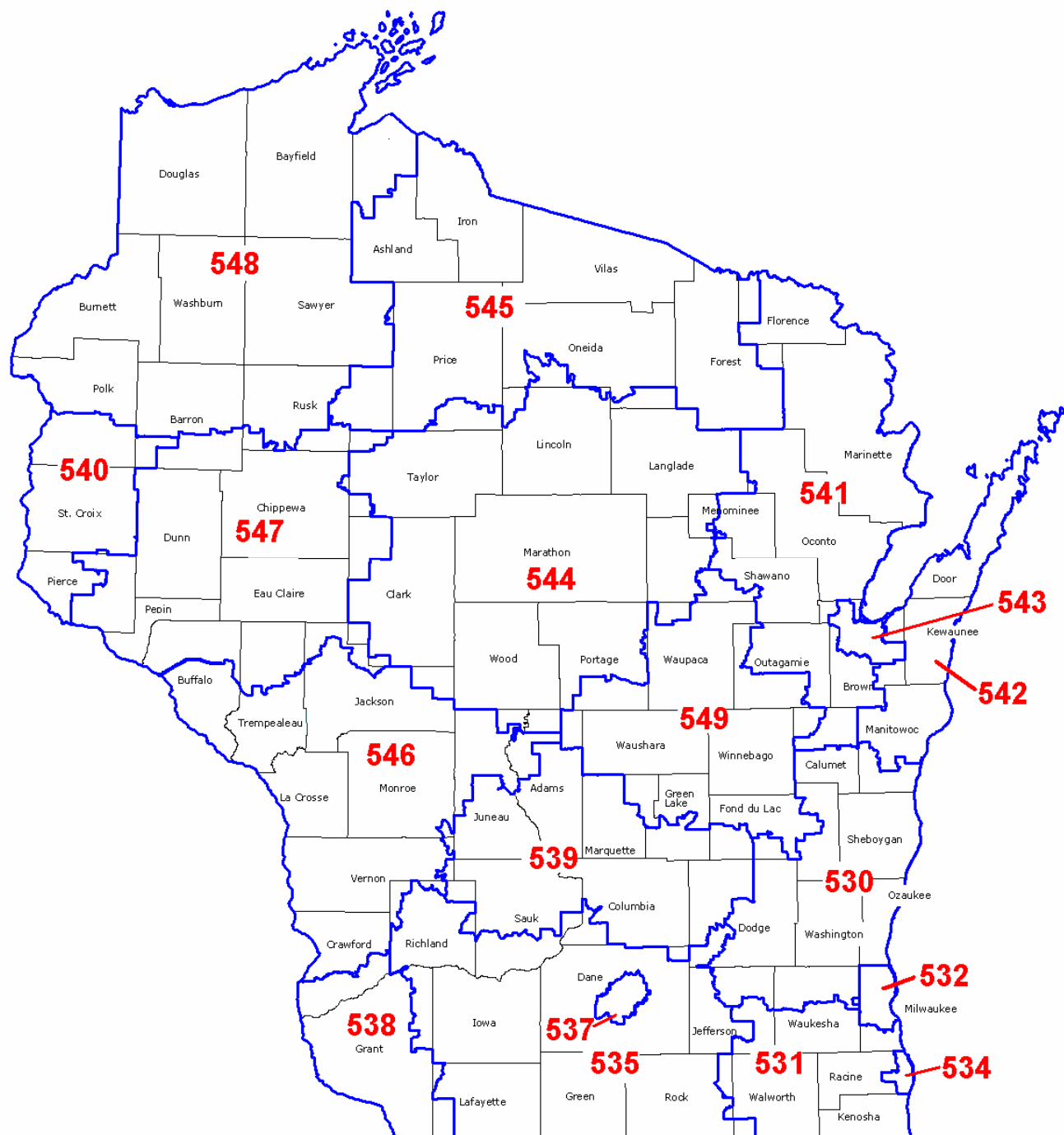
LORRAINE NARVAEZ LEAVES PECFA

Lorraine Narvaez resigned her position with the Petroleum Environmental Cleanup Fund Award (PECFA) program, effective September 5th, 2007. Lorraine started with PECFA in 1998 as an entry level claim reviewer and later moved into an objective level position.

PECFA UPDATES SINCE THE LAST ISSUE OF THE POST:

Update 32: <http://commerce.wi.gov/ERpdf/pecfa/ER-PECFA-Update32.pdf>

PECFA SITE REVIEW ZONE COVERAGE MAP



PECFA SITE REVIEW CONTACT INFORMATION

Bureau Director Oscar Herrera (608) 266-7605		Wisconsin Department of Commerce 201 W. Washington Avenue PO Box 8044 Madison, WI 53708-8044 FAX: 608-267-1381	
Section Chief Eric Scott (608) 266-8516			
Program Assistants Cathy Voges (608) 261-7717 Kristi Prindle (608) 267-3753			
Advanced Hydrogeologists Greg Michael (414) 357-4702 David Swimm (608) 264-8766 Tom Verstegen (920) 424-0025		Milwaukee	(see address below)
		Madison	(see address below)
		Oshkosh	(see address below)
Zip Code Starting with:	Senior Hydrogeologists		
532	Linda Michalets Monica Weis	(414) 357-4703 (414) 357-4705	Wisconsin Department of Commerce 9316 N. 107 th Street Milwaukee, WI 53224-1121 FAX: 414-357-4700
530	Stephen Mueller Lee Delcore	(414) 357-4704 (414) 357-4701	
531	Shawn Wenzel	(608) 261-5401	Wisconsin Department of Commerce 201 W. Washington Avenue PO Box 8044 Madison, WI 53708-8044 FAX: 608-267-1381
534, 538	Andy Alles	(608) 261-8509	
535	Ralph Smith Alan Hopfensperger	(608) 261-6543 (608) 266-0562	
537	Jon Heberer	(608) 261-5405	
539, 546	Gena Larson Brian Taylor	(608) 261-5404 (608) 266-0593	
545	David Blair	(608) 261-2515	
548	Will Myers	(608) 261-7718	
544	Dee Lance	(715) 342-3802	Wisconsin Department of Commerce 2715 Post Road Stevens Point, WI 54481-6456 FAX: 715-345-5225
540, 547	Tim Zeichert	(715) 345-5307	
542, 543	Robert Klauk	(920) 424-0046	Wisconsin Department of Commerce 2129 Jackson Street Oshkosh, WI 54901-1805 FAX: 920-424-0217
549*	Tom Verstegen	(920) 424-0025	
541	Beth Erdman	(920) 303-5410	

*Outagamie, Winnebago, Fond du Lac Counties are managed by Robert Klauk and Tom Verstegen whereas the remainder of 549 sites, including the City of New London, are managed by Dee Lance.

PECFA CLAIM REVIEW CONTACT INFORMATION

Bureau Director Oscar Herrera (608) 266-7605		Wisconsin Department of Commerce 201 W. Washington Avenue PO Box 8044 Madison, WI 53708-8044 FAX: 608-267-1381
Section Chief Claim Review Section Dennis Legler (608) 267-7642		
Position	Contact Information:	
Claim Review	Linda Collier (608) 267-5264 Tanya Herranz (608) 266-6796 Tim Prosa (608) 261-7715	Wisconsin Department of Commerce 201 W. Washington Avenue PO Box 7838 Madison, WI 53707 FAX: 608-267-1381
Initial Claim Eligibility	Renee Dickey (608) 264-8765	
Alternate Proof of Payment and Agent Approval	Mary Ann Gosda (608) 266-9420	
Appeals Field Audit	James Moser (608) 267-1394	
Appeals Coordinator-Initial Contact for Appeals	Laura Pleasants (608) 261-2511	
Initial Claim Review	Diane Ploessl (608) 261-7723	
Financial Manager-Payment Issues	Dottie White (608) 266-3713	
Program Assistant	Kristi Prindle (608) 267-3753	Wisconsin Department of Commerce 201 W. Washington Avenue PO Box 8044 Madison, WI 53708 FAX: 608-267-1381
Field Auditor	Carl Kramer (262) 638-7247	